

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
PROJECT SOUTH)	
)	
and)	
)	
RINA HERNANDEZ,)	Civ. A. No. 19-0895 (APM)
)	
Plaintiffs,)	
)	
v.)	
)	
)	
U.S. IMMIGRATION & CUSTOMS)	
ENFORCEMENT)	
)	
and)	
)	
U.S. CITIZENSHIP AND IMMIGRATION)	
SERVICES,)	
)	
Defendants.)	
_____)	

ANSWER TO PLAINTIFFS' COMPLAINT

Pursuant to Federal Rule of Civil Procedure 8, Defendants United States Immigration and Customs Enforcement (“ICE”) and United States Citizenship and Immigration Services (“USCIS”), by and through their undersigned counsel, hereby answer the Complaint (“Complaint”) filed by Plaintiffs, Project South and Rina Hernandez (“Plaintiffs”), on March 28, 2019, as follows:

DEFENDANTS' RESPONSES TO THE NUMBERED PARAGRAPHS

In response to the specifically-enumerated paragraphs, as set forth in the Complaint, Defendants admit, deny and otherwise aver as follows. All allegations not specifically admitted herein are denied.

PRELIMINARY STATEMENT¹

1. The allegations contained in Paragraph 1 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants admit that Yulio Castro-Garrido was transported to the Southwest Regional Medical Center on January 7, 2019. Defendant lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

2. The allegations contained in Paragraph 2 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

3. The allegations contained in Paragraph 3 consist of Plaintiffs' characterization of this action, to which no response is required. To the extent that a response is required, Defendants admit that this action purports to be brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, and respectfully refers the Court to the FOIA request for a complete and accurate description. Defendants deny any allegations inconsistent therewith.

JURISDICTION AND VENUE

4. The allegations contained in Paragraph 4 consist of Plaintiffs' conclusions of law regarding subject matter jurisdiction, to which no response is required. To the extent that a response is required, Defendants admit that this action purports to be brought pursuant to the FOIA, 5 U.S.C. § 552, *et seq.*, and that this Court has subject matter jurisdiction over this action.

¹ Merely for ease of reference, Defendants' Answer replicates the remaining headings contained in the Complaint. Although Defendants believe that no response is required to such headings, to the extent a response is deemed required and to the extent those headings and titles could be construed to contain factual allegations, those allegations are denied.

5. The allegations contained in Paragraph 5 consist of Plaintiffs' conclusions of law regarding venue, to which no response is required. To the extent that a response is required, Defendants admits that 5 U.S.C. § 552(a)(4)(B) governs venue in actions brought pursuant to the FOIA, and that venue is proper in this Court.

PARTIES

6. The allegations contained in Paragraph 6 consist of Plaintiffs' characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

7. The allegations contained in Paragraph 7 consist of Plaintiffs' characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

8. The allegations contained in Paragraph 8 consist of Plaintiffs' characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

9. The allegations contained in Paragraph 9 consist of Plaintiffs' characterization of itself and do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

10. Defendants admit that Plaintiffs submitted the FOIA request, dated May 1, 2018, on behalf of itself and the Castro-Garrido family. Defendants respectfully refer the Court to the request for a complete and accurate description of its contents.

11. The allegations contained in Paragraph 11 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

12. The allegations contained in Paragraph 12 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

13. Defendants admit that ICE is a component of the Department of Homeland Security ("DHS"). The remaining allegations contained in paragraph 13 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

14. Defendants admit that USCIS is a component of DHS. The remaining allegations contained in paragraph 14 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

FACTS

A. ICE's Extensively Documented Epidemic of Medical Neglect at Stewart and Dangerously Low Staffing at the Stewart Detention Center.

15. The allegations contained in Paragraph 15 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

16. The allegations contained in Paragraph 16 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants respectfully refer the Court to the DHS Office of Inspector General's ("OIG") report for a complete and accurate description of its contents. Defendants further deny all allegations inconsistent therewith.

17. The allegations contained in Paragraph 17 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants respectfully refer the Court to the DHS OIG report for a complete and accurate description of its contents. Defendants further deny all allegations inconsistent therewith.

18. The allegations contained in Paragraph 18 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants respectfully refer the Court to the cited material for a complete and accurate description of its contents. Defendants further deny all allegations inconsistent therewith.

19. The allegations contained in Paragraph 19 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants respectfully refer the Court to the cited material for a complete and accurate description of its contents. Defendants further deny all allegations inconsistent therewith.

20. The allegations contained in Paragraph 20 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants respectfully refer the Court to the cited material for a complete and accurate description of its contents. Defendants further deny all allegations inconsistent therewith.

21. The allegations contained in Paragraph 21 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required,

Defendants respectfully refer the Court to the cited material for a complete and accurate description of its contents. Defendants further deny all allegations inconsistent therewith.

22. The allegations contained in Paragraph 22 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants respectfully refer the Court to the cited material for a complete and accurate description of its contents. Defendants further deny all allegations inconsistent therewith.

23. The allegations contained in Paragraph 23 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants respectfully refer the Court to the cited material for a complete and accurate description of its contents. Defendants further deny all allegations inconsistent therewith.

24. The allegations contained in Paragraph 24 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

25. The allegations contained in Paragraph 25 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants respectfully refer the Court to ICE's Office of Acquisition Management's ("OAQ") "Justification for Other than Full and Open Competition" for a complete and accurate description of its contents. Defendants deny all allegations inconsistent therewith.

26. The allegations contained in Paragraph 26 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants respectfully refer the Court to the DHS OIG report for a complete and accurate description of its contents. Defendants deny all allegations inconsistent therewith.

27. The allegations contained in Paragraph 27 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

28. The allegations contained in Paragraph 28 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

29. The allegations contained in Paragraph 29 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

30. The allegations contained in Paragraph 30 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

B. Yulio's Widely Observed, Yet Untreated Medical Decline at Stewart.

31. The allegations contained in Paragraph 31 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

32. The allegations contained in Paragraph 32 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required,

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

33. The allegations contained in Paragraph 33 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

34. The allegations contained in Paragraph 34 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

35. The allegations contained in Paragraph 35 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

36. The allegations contained in Paragraph 36 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

37. The allegations contained in Paragraph 37 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

38. The allegations contained in Paragraph 38 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

39. The allegations contained in Paragraph 39 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

C. ICE's Conflicting, Misleading Statements After Yulio's Death.

40. Defendant ICE admits that it released a press release on January 31, 2018, and respectfully refers the Court to the press release for a complete and accurate description of its contents.

41. Defendant ICE admits that it released a press release on January 31, 2018, and respectfully refers the Court to the press release for a complete and accurate description of its contents.

42. Defendant ICE admits that it released an amended press release on January 31, 2018, and respectfully refers the Court to the press release for a complete and accurate description of its contents.

D. Defendants' Unlawful Withholdings in Response to Plaintiffs' FOIA Requests.

43. Defendant ICE admits that it received a FOIA request from Plaintiffs, dated May 1, 2018, and respectfully refers the Court to the request for a complete and accurate description of its contents.

44. Defendant ICE admits that Plaintiff's FOIA request included a request for expedited processing, and respectfully refers the Court to the request for a complete and accurate statement of its contents.

45. Defendant ICE admits that by letter dated May 2, 2018, the ICE FOIA Office acknowledged Plaintiffs' request assigning it tracking number 2018-ICFO-33074, and respectfully refers the Court to the acknowledgement letter for a complete and accurate description of its contents.

46. Defendant ICE admits that by acknowledgement letter dated May 2, 2018, the ICE FOIA Office informed Plaintiffs that portions of the information sought were under the purview of USCIS, and respectfully refers the Court to the letter for a complete and accurate description of its contents.

47. Defendant ICE admits that by email dated May 2, 2018, the ICE FOIA Office denied Plaintiffs' request for expedited processing, and respectfully refers the Court to the email for a complete and accurate description of its contents.

48. Defendant USCIS admits it sent an acknowledgment letter dated May 16, 2018, and respectfully refers the Court to that letter for a complete and accurate description of its contents.

49. Defendant USCIS admits it sent an acknowledgment letter dated May 16, 2018, and respectfully refers the Court to that letter for a complete and accurate description of its content.

50. Defendant ICE admits that Plaintiffs appealed the denial for expedited processing by letter dated June 7, 2018, and respectfully refers the Court to the letter for a complete and accurate description of its contents.

51. Defendant ICE admits that by email dated June 19, 2018, ICE acknowledged receipt of Plaintiffs' appeal assigning it tracking number 2018-ICAP-00340, and respectfully refers the Court to the email for a complete and accurate description of its contents.

52. Defendant ICE admits that by letter dated July 16, 2018, ICE provided its response to Plaintiffs' appeal, and respectfully refers the Court to the letter for a complete and accurate description of its contents.

53. Defendant USCIS admits Plaintiffs sent a letter dated June 5, 2018, and respectfully refers the Court to that letter for a complete and accurate description of its contents..

54. Defendant USCIS admits it sent a letter dated June 21, 2018, and respectfully refers the court to Exhibit J for a complete and accurate description of its contents.

E. No End in Sight.

55. Defendant ICE denies the allegations contained in Paragraph 55. Plaintiffs' Exhibit K refers to the average number of days for the entire DHS to complete its processing of requests in the Complex track, not specifically for ICE's completion rate. For component specific response times, requesters are to review the annual FOIA report, thus Defendants respectfully refer the Court to the annual FOIA report for a complete and accurate description of component specific response times.

56. Defendant ICE admits that the DHS status check website, attached to the Complaint as Exhibit F, states that the estimated delivery date for records is June 18, 2018.

57. Defendant ICE admits that, as of the filing date of this Complaint, ICE has not made a final response to Plaintiffs' request.

58. Defendant USCIS respectfully refers the Court to the document attached as Exhibit L to the Complaint for a complete and accurate description of its contents.

59. Defendant USCIS respectfully refers the Court to the document attached as Exhibit L to the Complaint for a complete and accurate description of its contents.

60. Defendant USCIS respectfully refers the Court to the document attached as Exhibit M to the Complaint for a complete and accurate description of its contents.

61. In response to the allegations in Paragraph 61 of the Complaint, USCIS admits that it processes requests on a first in first out basis. The remainder of the allegations in Paragraph 61 are Plaintiffs' characterization of that process to which no response is required. To the extent a response is required, USCIS denies the remaining allegations in Paragraph 61.

62. The allegations contained in Paragraph 62 do not set forth a claim for relief or aver facts in support of a claim to which a response is required. To the extent that a response is required, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations.

CLAIMS FOR RELIEF

COUNT ONE: VIOLATION OF THE FREEDOM OF INFORMATION ACT

5 U.S.C. § 552(a)(4)(B)

PLAINTIFFS v. ICE

2018-ICAP-00340

DENIAL OF EXPEDITED PROCESSING

63. Defendants incorporate by reference its responses to all preceding paragraphs.

64. The allegations contained in Paragraph 64 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

65. The allegations contained in Paragraph 65 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

66. The allegations contained in Paragraph 66 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

67. The allegations contained in Paragraph 67 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

COUNT TWO: VIOLATION OF THE FREEDOM OF INFORMATION ACT
5 U.S.C. § 552(a)(4)(B)
PLAINTIFFS v. USCIS
APP2018000913
DENIAL OF EXPEDITED PROCESSING

68. The allegations contained in Paragraph 68 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

69. The allegations contained in Paragraph 69 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

70. The allegations contained in Paragraph 70 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

71. The allegations contained in Paragraph 65 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

COUNT THREE: VIOLATION OF THE FREEDOM OF INFORMATION ACT
5 U.S.C. § 552(a)(4)(B)
PLAINTIFFS v. ICE
2018-ICFO-33074
Unlawful Withholding of Agency Records by ICE

72. Defendants incorporate by reference its responses to all preceding paragraphs.

73. The allegations contained in Paragraph 73 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

74. The allegations contained in Paragraph 74 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

75. The allegations contained in Paragraph 75 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

76. The allegations contained in Paragraph consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

COUNT FOUR: VIOLATION OF THE FREEDOM OF INFORMATION ACT
5 U.S.C. § 552(a)(4)(B)
PLAINTIFFS v. USCIS
NRC2018072037
Unlawful Withholding of Agency Records by USCIS

77. Defendants incorporate by reference its responses to all preceding paragraphs.

78. The allegations contained in Paragraph 78 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

79. The allegations contained in Paragraph 79 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

80. The allegations contained in Paragraph 80 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

81. The allegations contained in Paragraph 81 consist of Plaintiffs' conclusions of law, to which no response is required. To the extent that a response is required, Defendants deny the allegations.

REQUEST FOR RELIEF

Defendants deny the relief requested by Plaintiffs and deny that Plaintiffs are entitled to any relief.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Defendants respectfully request and reserve the right to amend, alter, and supplement the defenses contained in this Answer as the facts and circumstances giving rise to the Complaint become known through the course of the litigation.

SECOND DEFENSE

The information that Defendants have withheld, or will withhold, in response to Plaintiffs' FOIA request may be exempt in whole or in part from public disclosure under FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, *et seq.*

THIRD DEFENSE

As to some, or all of the claims asserted in this action, Plaintiffs have failed to state a claim upon which relief may be granted under the FOIA.

FOURTH DEFENSE

Plaintiffs have not alleged sufficient factual and/or legal bases for its request for costs and/or attorneys' fees.

Dated: May 6, 2019

Respectfully submitted,

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